



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

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August 12th, 1998

Minutes of the August 12th, 1998, meeting of the Commission on Governmental Ethics and Election Practices held in Room 120, State Office Building, Augusta, Maine.

Present: Chairman Peter B. Webster; Members Linda W. Cronkhite, Harriet P. Henry, G. Calvin Mackenzie, and Merle R. Nelson; Director William C. Hain, III; Counsel Phyllis Gardiner; Candidate Registrar Dottie Perry; and Commission Assistant Melissa Caron.

Chairman Webster called the meeting to order at 9:01 a.m.

The minutes of the July 13th, 1998, meeting were approved as submitted, subject to a minor revision to reflect that Mrs. Nelson's absence had been due to a death in her family.

To accommodate the personal schedules of those members of the public who had requested to address the Commission regarding waiver of late filing penalties, individual appeals were taken out of regular order as follows:

Agenda Item #5B:

Ms. Beth Nagusky, representing the Independent Energy Producers of Maine, requested a waiver from the payment of a \$100 penalty for the late filing of the June lobbyist disclosure report. After discussion, Mrs. Nelson moved and Mr. Mackenzie seconded to assess a \$50 penalty.

Agenda Item #6A:

Mr. John Cleveland, representing the Maine Citizens for Responsible Government, requested to be heard by the Commission to discuss the penalty for the late filing of his organization's PAC report.

He requested a waiver of the penalty based on:

- (1) No harm had been done to the integrity of the reporting process, and
- (2) Honest human error.

In response to Mrs. Nelson's question about what he might have done differently, Mr. Cleveland responded that he might have faxed the report but had not been aware until he talked to Staff that that would have been acceptable. Mrs. Nelson encouraged Staff to highlight the fact that faxes of reports are acceptable in correspondence to filers. After discussion, Mrs. Cronkhite moved

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and Mr. Mackenzie seconded to assess a 50% penalty as a first violation in the amount of \$328.37.

The above item generated discussion initiated by Mrs. Nelson regarding the possibility of a future Commission consideration of the issues associated with the penalty assessment and collection process and what penalties that have been assessed may remain unpaid. It was generally agreed that such a discussion would be useful and could lead to the identification of possible recommendations of legislative proposals to make the penalty assessment and collection process more efficient.

Agenda Item #6B:

Mr. Robert Duplessie, a candidate for the Maine House of Representatives from District 29, requested to be heard by the Commission to explain the late filing of his 6-day pre-primary campaign finance report. He stated that he had mailed the report on May 29, 1998, and produced a postage receipt as evidence thereof. He further indicated that he had been in the State Office Building assisting another candidate with his report on the due date and he would have resubmitted his own report if he had had any reason to suspect that his report had not been received by Staff. Only when he received the standard delinquency notice letter had he been aware that his report had not been received. Mrs. Nelson moved and Mr. Mackenzie seconded to assess a 50% penalty as a first-time late filer. During discussion, Mr. Hain indicated that this case differed from others in that Mr. Duplessie had been able to produce some evidence of mailing, apparently having made a good faith attempt to deliver his report. Mr. Mackenzie disagreed with the significance of that distinction and reaffirmed his second when Mrs. Nelson requested to withdraw her motion. On the vote on Mrs. Nelson's original motion, the motion was defeated 1-4, all opposing except Mr. Mackenzie. Thereafter, Mrs. Nelson moved and Mrs. Cronkhite seconded to waive any monetary penalty while affirming that a violation had occurred and that any subsequent violation should be considered a second violation for penalty assessment purposes. The motion carried by a vote of 4-1, Mr. Mackenzie opposing.

Agenda Item #2:

Mr. Hain advised that Mr. Carter indicated that he would be sending an affidavit attesting to the financial status of the Ban Clear-cutting PAC as support for his request for Commission approval to terminate the PAC. On a motion by Mr. Mackenzie and seconded by Mrs. Nelson to table the item until the September meeting and, after discussion, the motion was unanimously voted and Mr. Hain was directed to communicate to Mr. Carter that he would have until the September Commission meeting to address the PAC's financial status.

Agenda Item #4:

Mr. Hain reported on a presentation made by IDEAS International, Inc. of the company's electronic filing software capabilities to himself and Mr. Mackenzie. Chairman Webster inquired about the availability of funds to pay for the procurement of commercial software and whether there is a statutory date to provide electronic filing capability. Judge Henry inquired about the possible availability of grant funds to help defray the anticipated costs. Mr. Mackenzie noted that it is unusual for governmental entities to be the beneficiaries of grant funds. Mrs. Nelson inquired about the availability of Clean Election Act funds to defray the costs of



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electronic filing. She suggested that the Commission communicate with the Legislative Appropriations Committee and the Commission's oversight committee regarding the matter of payment of an electronic filing capability as required by State law. After discussion of funding alternatives, Chairman Webster suggested that Mr. Hain may be able to talk to vendors at the Seattle, WA COGEL conference in September for ideas about possible costs and availability of vendor options.

Agenda Item #5A:

The Commission reviewed the correspondence from the Maine Hospital Association requesting a penalty waiver for the late submission of its lobby report. After Judge Henry moved and Mr. Mackenzie seconded, it was voted to assess a \$50 first violation penalty.

Agenda Item #6C:

Mrs. Cronkhite moved, Mrs. Nelson seconded, and the Commission unanimously voted to table the Maine Republican Party Committee's request until the September meeting because Mr. Nicholson will not be available to be present until then.

Agenda Item #7:

On the complaint filed by Representative James O. Donnelly, the House Republican Leader, against the House Democratic Campaign Committee, for its failure to report in a timely manner the receipt of contributions made at a fund-raiser sponsored by the Committee on May 27th in Portland, the Commission discussed its previous action of May 16th, 1994, in the context of the instant complaint. The previous decision addressed the timing of the "receipt" of contributions, but it had not addressed who would be responsible for reporting those "receipts." Judge Henry suggested that the Commission's regulations address the time and recipient for reporting receipt of contributions. Mr. Mackenzie moved and Mrs. Nelson seconded to dismiss the complaint and to supplement the May 1994 Commission interpretation of the term "receipt" by adding that contributions should be reported as received when they are in actual or constructive possession of the person (e.g., treasurer, candidate, chairman, etc.) responsible for reporting the receipt of contributions and expenditures to the Commission. After discussion of the issue, the motion was approved unanimously with the suggestion that Mr. Hain communicate the Commission's decision and interpretation to appropriate campaign personnel to avoid similar problems in the future.

Agenda Item #8:

After review of the related correspondence and brief discussion, and after Mr. Mackenzie moved and Judge Henry seconded, it was voted to dismiss the complaint filed by Mr. Robert Poulin against Mr. Ronald Jean for an inadequate attribution on campaign literature with a written warning.

Agenda Item #9A:

Mrs. Cronkhite and Mrs. Nelson discussed the confirmation hearings held on August 4th, 1998, with particular note of the Committee's questions regarding the Clean Election Act, the lack of geographic diversity of the Commission members, and the apparent need to establish more



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positive communications between the Commission and the Joint Standing Committee on Legal and Veterans Affairs, which is the committee with oversight responsibility for the Commission.

Agenda Item #9B:

The Commission reviewed the correspondence from Senator John W. Benoit to Mr. Hain regarding a proposed radio advertisement Senator Benoit had been requested to make as a spokesman on behalf of a commercial entity regarding a local matter not associated with Senator Benoit's political position or his campaign. No further action was required.

Agenda Item #9C:

Mrs. Nelson inquired about the inclusion of an opportunity to discuss issues such as gifts, trips, etc. on a future agenda or, alternatively, at a "retreat" or some other acceptable form of informal meeting at which the Commission would have the time to discuss the various opinions of the members without the need to focus on a particular case.

She suggested that the Commission may want to discuss the subjects of:

- (1) Oral, telephonic opinions and the preservation of that advice;
- (2) Gifts and trips and the potential for conflict of interest; and
- (3) The continuity of Commission precedents.

After discussion, the Staff was requested to prepare a policy statement for consideration by the Commission at the October meeting regarding the issues of acceptance of gifts and the question of trips by legislators that are paid for in whole or in part by an entity other than the State.

On motion and by unanimous agreement, the Commission recessed for approximately 15 minutes, during which time members observed a preview by Summer Intern Matt Smith of the newly-developed Commission Internet Web Page. After the preview, the Commission enthusiastically approved the Staff request to "upload" the Web Page and formally establish a Commission Web Page on the Maine State Web Site. Access may be obtained by addressing www.state.me.us/ethics directly or by clicking on State Agencies and Ethics Commission on the Maine State Home Page.

Agenda Item #10:

On motion by Mr. Mackenzie and seconded by Mrs. Nelson, the Commission went into executive session to discuss the status of the lawsuit, *Maine Campground Owners Association and Maine Civil Liberties Union v. Peter B. Webster, et al.* (Commission Members), and *Andrew Ketterer* (State Attorney General). At the conclusion of the briefing by counsel, the Commission voted unanimously to go back into regular session. No action had been taken that required ratification.

Agenda Item #3:

In connection with the proposed Clean Election Act Regulation, Mr. Hain briefed members regarding the written documentation that had been prepared for their review for discussion at the September meeting. The materials included a synopsis of the oral comments made at the three public hearings in August, Portland, and Bangor; a copy of the list of attendees at those meetings; a copy of written comments on the rules that had been received to date; and a proposed revision of the draft rules incorporating the comments that had been made and received to date.



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Mr. Hain indicated that the only significant issues seemed to be the impact of surplus campaign equipment and computers on seed money contribution limits and the process of verifying qualifying contributors as being registered voters in the electoral district of the candidate. Discussion of the oral and written comments and their impact on the draft regulations was scheduled for the September meeting, with the view toward adopting a final rule at that time if at all possible.

Other Items: Mrs. Nelson renewed discussion of the possibility of including time on future agendas for policy discussions, such as an opportunity for the Staff to raise any problems it may be having, etc. In response to Mrs. Nelson's suggestion that persons in the audience be asked to identify themselves, Chairman Webster responded that he did not think that would be appropriate because it may have a chilling effect on people who may want to attend Commission meetings but, for reasons of their own, remain anonymous, which they have the right to do.

On motion and unanimous agreement, the Commission adjourned at 12:16 p.m.

Respectfully submitted,

William C. Hain, III
Director